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White Paper on Proposed Licensing of Strata Managers

Ministry of Social Development and Economic Security

and

Ministry of Finance and Corporate Relations

October 2000

BRITISH COLUMBIA

White Paper on
Proposed Licensing of Strata Managers

The 1998 Barrett Commission of Inquiry into the Quality of Condominium Construction in British Columbia received reports from homeowners on the lack of consumer protection when using strata management firms. Particular concern was expressed with respect to the potential vulnerability of strata corporations who hire unregulated firms to manage finances and hold strata funds.

The Commission's June 1998 report to government included the following comments on the importance of good strata management:

> *There is a need to ensure minimum standards of business practices and professional acumen . . . It is useful to consider ongoing professional development. This should deal with fiduciary responsibilities for the management of finances, ongoing maintenance and repair standards, and plans for long-term repairs and long-term replacement of common property features.*

The Barrett Commission recommended that all strata managers be registered and licensed with the Homeowner Protection Office, pending discussion with the industry on the most appropriate form of education and qualifications.

The B.C. Government has accepted the spirit of the Barrett recommendations concerning licensing of strata managers, and this paper sets out for discussion two options for a licensing scheme.

This white paper is intended to provide interested parties with the opportunity to comment on these options. Government will consider all comments, including comments on the overall appropriateness of either of the options for licensing. However, to assist government in establishing a licensing program for strata managers as soon as possible, comments must be received by **November 15, 2000** at the following address:

Ministry of Social Development and Economic Security
Housing Policy Branch
P.O. Box 9952 Stn Prov Govt
Victoria, BC V8W 9R3
Telephone: (250) 387-7088
Facsimile: (250) 387-5120
E-mail: Christine.Edgar@gems7.gov.bc.ca

Please note that although submitted comments will not be posted for public review, freedom of information legislation may require government to make comment correspondence available.

Introduction

This paper sets out two options for strata manager licensing, one administered by the Real Estate Council of British Columbia (REC) and the other administered by the Homeowner Protection Office (HPO).

The *Strata Property Act* (SPA) is self-regulating and provides for the administration of strata corporations. This self-regulation will not change under either of the regulatory options.

The purpose of licensing and regulating strata managers will be to:

- ensure that strata managers have minimum appropriate skills and knowledge to provide strata management services to strata corporations; and
- ensure that strata managers are more accountable for their management of the common property, assets and affairs of strata corporations.

Current Regulatory and Statutory Context

As noted above, the first Barrett Commission report in June, 1998, recommended that the licensing of strata managers be administered by the HPO. The recommendations are set out below:

> *Recommendation #52: All property management firms for condominium buildings be registered immediately with the Homeowner Protection Office.*
>
> *Recommendation #53: All property management firms for condominium buildings be licensed by the Homeowner Protection Office, pending discussion with the industry on the most appropriate form of education, training and qualification.*

In July 1998, the B.C. legislature passed the *Homeowner Protection Act* (HPA). The HPA amended the definition of "agent" in the *Real Estate Act* (REA) to provide for the licensing of persons who perform strata management services for strata corporations.

Following the passage of the amendment to the REA, the Ministry of Finance and Corporate Relations, together with the Office of the Superintendent of Real Estate and staff of the REC, sought and received input from consumer and industry stakeholders for the purposes of developing regulations under the REA to support the amendment to the REA.

In August 1999, the Minister of Social Development and Economic Security announced a second sitting of the Barrett Commission. In its second report, which came out in March, 2000, the Commission repeated its earlier recommendation that strata managers be regulated through the HPO. The Commission also stated that it has concerns about the perceived and real conflict of interest on the REC, vis-a-vis their relationship to property management companies, which may be owned by realty firms (see excerpts from Barrett reports in Appendix 2).

The amendment to the REA has yet to be brought into force.

The REC is established under the REA and together with the Superintendent of Real Estate, administers and enforces the REA in order to protect the public. The REC has statutory authority to investigate complaints against licensees, and authority, delegated to it by the Superintendent, for imposing disciplinary actions. In addition, the Superintendent has delegated to the REC responisiblity for issuing licenses under the REA. Therefore, if the amendment to the REA is brought into force, strata manager licensing would be the responsibility the REC. The REC is made up of seventeen industry-elected members and two lay members appointed by government.

The HPO is a provincial crown corporation that is responsible for strengthening consumer protection for new homebuyers and improving the quality of residential construction. The HPO's mandates include residential builder licensing and regulation of third-party home warranty insurance, administration of a loan program and a PST relief grant program for owners of leaky homes, and research and education to benefit the residential construction industry and consumers. The HPO, which was set up under the HPA, is governed by a board appointed by the Lieutenant Governor in Council, and receives advice from a Provincial Advisory Council on Homeowner Protection made up of representatives from the residential construction industry, consumers, insurers, labour and governments. The HPO has a focus on education for strata owners on matters related to building envelope problems and on repair processes for leaky buildings. The HPO has gained a high public profile from its work related to the leaky condo crisis.

The REC option can be implemented by regulation without further statutory amendments. The HPO option, which was proposed by the Barrett Commission, would require legislative development. Acordingly, the REC option could be implemented sooner than the HPO option.

The section below, 'Fundamental Licensing Parameters', sets out provisions that would apply to either regulatory model. Following these general provisions, the two different regulatory options are discussed.

Fundamental Licensing Parameters

1. Strata Management Activities Requiring Licensing

The term "strata management" refers to the management and administration of common property on behalf of a strata corporation (whether residential or commercial). Under the SPA, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. The strata corporation generally fulfils its duties through an elected strata council. A strata council may enter into contracts on behalf of the strata corporation for the provision of strata management services to the strata corporation. Strata managers, therefore, operate at the direction of and report to an elected strata council.

In contrast to the term "strata management," the term "property management" refers to the rental or lease, and often maintenance, of property on behalf of a third party. Where the owner of the property has hired a company to perform these functions, the company is considered to be acting as a property manager. Property managers are already required by the REA to be licensed by the REC.

Who will need to be licensed?

Persons who perform strata management services for strata corporations in return for or in expectation of a fee, gain or reward will require licensing.

For the purposes of licensing, it is proposed that strata management services will mean the management, for a fee, of the common property, assets and affairs of a strata corporation including the collection of fees and assessments levied, and the payment of expenses, on behalf of and with the authority of the strata corporation.

Those who perform the following strata management activities will first have to obtain a licence from the regulatory body (i.e., either from the REC, or the HPO):

- making payments on strata corporation expenses (including emergency expenditures);
- maintaining account(s) for a strata corporation (holding and maintaining contingency reserve funds, security deposits and/or special assessments);
- collecting monthly strata fees and other income on behalf of the strata corporation (e.g., special levies, fines for bylaw infractions, rent on rental properties);
- entering into contracts on behalf of the strata corporation for services, supplies, etc.;
- hiring, paying and supervising employees or contractors for the operation and maintenance of the common property of the strata corporation;
- in conjunction with any of the above activities, providing consultative services to the strata corporation regarding the SPA, regulations, bylaws, rules and other statutory requirements (e.g., *Municipal Act*, *Residential Tenancy Act*).

Who will not need to be licensed?

Licensing requirements will not apply to self-managed strata corporations. Strata lot owners or members of a strata council who perform strata management services on behalf of their own strata corporation will not need to be licensed.

There are also a number of minor administrative activities or functions associated with the responsibilities of strata managers that, on their own, would not require licensing. These minor activities include handling strata corporation correspondence, maintaining office records such as parking/locker allocations, performing basic bookkeeping functions, organizing meetings, providing 24-hour emergency service, publishing a strata council newsletter, or performing grounds and building maintenance.

2. General Educational Requirements

Based upon consultations that have taken place with industry and consumers to date, the educational requirements for strata manager licensing would likely include the following:

- concept of strata property law and management;
- thorough knowledge of the SPA, particularly provisions of the SPA affecting strata managers, including: obligations of owners, the strata council and developers, meetings, proxies, voting, bylaws, minutes and dispute-resolution mechanisms;
- knowledge of related statutory requirements (e.g., *Residential Tenancy Act*, *Municipal Act*, Employment Standards and Workers Compensation, HPA, Fire Code, Building Code);
- financial matters, including budget preparation, expense allocation, contingency reserve funds, auditing and accounting principles, financial reporting, cash flow and insurance;
- maintenance and repair: planning, tendering, contract supervision, rules of project management (to ensure, for example, that strata managers are not duplicating and charging for project management services done by repair consultants), warranties, building systems design and maintenance, building envelope, plumbing, HVAC, landscaping, swimming pools, elevators, mechanical and electrical systems, ventilation and air conditioning, and security systems; and
- contract management.

A new course or courses will likely need to be developed to cover this unique range of topics.

3. General Audit and Reporting Requirements

All strata management firms would be subject to audit and compliance procedures conducted by the regulatory body. They would also be required to be in sound financial circumstances, and to keep such books, records and accounts as may be necessary to show and readily distinguish all money received for or on behalf of others.

Many businesses involved in the management of strata properties maintain numerous accounts to keep the monies of various strata corporations separate. However, those strata management firms that pool funds would be required to have adequate accounting systems to ensure sufficient tracking of all funds is possible.

Strata management firms would be required to file an Accountant's Report on an annual basis, signed by Chartered Accountant or Certified General Accountant, verifying that the firm's accounts are in proper order. The purpose of the Accountant's Report would be to ensure that the strata manager has properly held and disbursed strata corporation funds. The Accountant's Report would provide information on the working capital to indicate whether the licensed firm was solvent or was experiencing serious financial difficulties.

The strata management firm would be required to provide the accountant who prepares the Accountant's Report with all the books and records of the agency and to disclose every bank account opened and/or closed during the year. The regulatory body would review the Accountant's Report filed by strata management firm for information relating to the management of trust accounts and the working capital of the firm.

The Accountant's Report would determine whether acceptable accounting procedures are in place and would include a review of the following:

- the adequacy of the strata management firm's accounting system in meeting the requirements relating to records, payments into and withdrawals from trust accounts;
- all monthly trust reconciliations and a comparison of gross trust liabilities with trust bank balances; and
- all trust bank account statements and passbook balances, noting any overdraft or other unusual entries.

The Accountant's Report would require the accountant to report any irregularities or exceptions to the regulatory body, and the licensed firm would be required to submit the completed Accountant's Report within a designated time following the firm's fiscal year-end.

4. Financial Safeguards

One objective of strata manager licensing will be to ensure that strata managers are more accountable for their management of common property and funds. To this end, the licensing program will require that some form of redress be available to strata corporations in the event of financial loss due to fraud or negligence.

The primary method of redress would remain with the court system, but the options under each model would improve the ability of strata corporations to recover lost funds. Options under consideration include bonding and insurance schemes, both of which are nonetheless likely to involve maximum dollar amount limits on liability.

5. Strata Manager Licensing and the *Strata Property Act*

The licensing of strata managers will not eliminate the obligations of a strata corporation to perform or supervise the management of the common property. Strata corporations will also continue to be responsible for monitoring for compliance with the terms and conditions of a strata management contract.

Under either regulatory model, the regulatory body would not have jurisdiction to adjudicate monetary or contract disputes. Nor would the regulator have jurisdiction to enforce the SPA, since that act provides for self-regulation by strata corporations.

However, it would be possible to require strata property managers to follow the requirements of the SPA in performing their contractual duties for the strata corporation. For example, the regulatory body could find a strata manager negligent if the strata manager did not properly collect maintenance fees, and could take enforcement action with respect to the strata manager's licence. However, the regulatory body would not have jurisdiction to actually ensure collection of the strata fees.

Regulatory Options

1. Option for Regulation by the Real Estate Council under the existing authority of the *Real Estate Act*

This model has been developed by the Ministry of Finance and Corporate Relations, with input from REC staff and the Office of the Superintendent of Real Estate. Proposed licensing requirements are included in detail in Appendix 1.

In large part, this option replicates existing licensing programs for real estate agents and property managers by the Real Estate Council.

This model was included in the HPA when it was passed in 1998. The HPA amended the REA to require the licensing of persons who perform strata management services for strata corporations. To come into effect, this provision requires regulations through an Order-In-Council.

Under this option, regulation of these persons would be the responsibility of the REC and the Superintendent of Real Estate.

To be licensed under this option, a strata management firm would have to meet requirements set by the REC and pay a licensing fee and a premium for errors and omissions insurance. The firm would have to provide a certified financial statement to prove it has adequate capital to meet operating expenses. Individuals would be licensed only if their application is sponsored by a licensed strata management firm.

To ensure that the public is well served, the REA requires that property managers and agents licensed under its auspices meet educational requirements. Similar requirements would have to be met by strata management companies and managers. A new educational program would have to be developed, focusing on the aforementioned legal requirements, financial services, professional services and maintenance services.

As a measure of protection to the public, firms and persons licensed under the *Real Estate Act* must obtain and file bonds. The Act was amended in 1998 to provide for an industry-operated and funded compensation fund to replace bonding, but the parameters of this fund are still being established, and so the bonding requirements remain in force for the time being. If the bonding requirements are still in place if and when strata management comes

under the Act, then they would apply to strata management firms and personnel until the compensation fund is established.

As an additional measure of public protection, real estate licensees are required to participate in an errors and omissions insurance program. This program is designed to protect licensees from liability claims arising out of errors, omissions or negligent acts, and provides an avenue for consumers to be compensated when they have incurred a loss due to the negligence or incompetence of a licensee. This requirement would also apply to strata management.

While management contracts between strata corporations and managers would not have to follow specific wording, such contracts would be mandatory and would have to set out the terms of agreement, termination provisions, a description of services to be provided, the level of bonding or surety coverage, all fees to be charged by the manager, and limitations on the manager's signing authority when acting on behalf of the strata corporation.

Licensed strata managers would be required to pay all money held or received on behalf of a strata corporation into a trust account. Strata management firms would be subject to office inspections performed by the REC. All new strata management firms would be inspected sometime after their first year of operations.

As with all licensees for which the REC has regulatory responsibility, the REC would have the authority to conduct inquiries into complaints about strata managers. Where a hearing committee of the REC finds breeches of the regulations or the REA, the REC would be able to impose disciplinary measures against the managers, including reprimands, suspension, cancellation or restriction of licenses, or additional educational requirements. Any decision of the REC may be appealed to the Commercial Appeals Commission, either by the licensee or by the Superintendent.

At present, the public is represented by two of the 19 members of the REC. To ensure that the public outside the real estate industry is better represented on this body, consideration is being given to increasing the number of public representatives on the REC to at least five.

Depending on the response to this paper, it is anticipated that regulations under the REA for strata managers will be enacted early in 2001. To enable appropriate transition, some requirements such as educational requirements would likely come into effect at a later date. Individuals who are not currently licensed, and those who are licensed but wish to perform strata management services in addition to the services they are currently licensed for would have to complete strata management education within a specified amount of time. These persons would hold restricted licenses for a set amount of time that would be cancelled if education requirements were not met.

2. Strata Manager Licensing Under the Homeowner Protection Office

A new program could be developed that would see strata managers regulated by the HPO. This option would require amendments to the HPA and regulations. A licensing program under this option could be in place later in 2001.

To be licensed under this option, a strata management firm would have to meet requirements set by regulation and enforced by the HPO. The licensing criteria would establish requirements including minimum educational requirements, technical capability, experience, financial capacity (including bonding/insurance), disclosure of potential conflicts and convictions for fraud or violations of the REA, *Consumer Protection Act*, etc. Applicants would apply to the Registrar of the HPO for a license and if the terms and conditions for licensing were met, the applicant would be granted a license.

A new educational program would be developed, focusing on the aforementioned legal requirements, financial services, professional services and maintenance services. Licensing requirements would be subject to a phase–in period to permit licensees an opportunity to complete the requirements. The new system would require mandatory on-going professional development as a condition of maintaining a license.

Licensed strata managers would be required to pay all money held or received on behalf of a strata corporation into an individual trust account. Licensees would also be required to participate in an errors and omissions insurance program that is designed to protect licensees from liability claims arising out of errors, omissions or negligent acts. Errors and omissions insurance could either be arranged individually by the strata manager (as a condition of licensing) or be provided by the HPO for licensed strata managers. In this second scenario, the HPO could contract with a single provider of errors and omissions insurance. The provider of coverage to the HPO would be selected through a competitive tender process. The tender process would be open to competitive reviews on a pre–set basis. The benefits of this single provider system include potentially lower premiums for licensees due to the economies of scale, consistency in the terms of the errors and omissions coverage, and the availability of errors and omissions coverage to all approved strata managers. The decision on whether the mandatory coverage is obtained by the strata manager from individual insurance companies or is arranged for by the HPO would be determined through consultation with stakeholders.

The regulatory framework would require licensed strata managers to use written strata management contracts. At the very least, the regulations would define items that must be addressed in a strata management contract. The regulations could, where there is a clear public interest to do so, specify certain basic terms and conditions of contracts. Mandating certain contract language would:

- promote consistency in contracts and ease of understanding for strata owners;
- allow the regulating body to review such contracts;
- ensure consistency with other legislation (*Strata Property Act*, etc.); and
- help eliminate ambiguity.

Some form of mandatory third party dispute resolution mechanism (mandatory mediation or arbitration) could provide for a more rapid and inexpensive mechanism to provide for the timely resolution of disputes when compared with the court system.

Under the current licensing system for residential builders and renovators, the Registrar for the HPO has broad powers of enforcement, including the right to inspect and investigate both the records of licensees and job sites. Additionally, the Registrar has powers to revoke, suspend, cancel and/or impose restrictions on licensees for specific violations of the HPA and its regulations. Similar provisions would be provided for under the licensing system for strata managers. Strata management firms and individual licensees would be subject to office inspections performed by the HPO compliance team.

All decisions of the Registrar would be required to be in writing and detail the reasons for any disciplinary action or refusal to grant a license. The applicant or licensee would have appeal rights through the Commercial Appeals Commission.

As part of its education and information transfer mandate, the HPO would initiate ongoing sessions for strata owners and managers on new and emerging issues as part of the licensing regime. Some of the sessions could also be directed to strata corporations that are self-managed.

Review Questions

Your views on the above options for strata manager licensing will help government to decide upon the preferred approach to licensing this industry. The following questions are provided to assist you in your review of this paper. However, all comments received will be given careful consideration, including comments on the detailed requirements of the proposal for licensing under the REA or under the HPO.

- Are the definitions of who will need to be licensed clear and adequate?
- Which regulatory body is best suited to performing licensing and enforcement of strata manager regulatory requirements, the Real Estate Council or the Homeowner Protection Office? Please provide reasons for your choice.
- The Barrett Commission stated it has concerns about the perceived and real conflict of interest on the REC, vis-a-vis their relationship to property management companies, which may be owned by a realty firm. Are you aware of any such conflicts of interest? Is the Barrett Commission recommendation for licensing by the HPO the most appropriate response to this conflict, or are there other ways of dealing with this conflict? Please provide reasons for your response.
- How important is it for firms that manage both rental and strata property to be licensed by the same regulatory body?
- What minimum financial safeguards are needed and what is the best way to provide them? Financial safeguard options include bonding, an industry-wide compensation fund, third-party liability insurance coverage against error or negligence, or strengthened strata management contracts?
- What types of education should strata managers be required to have?
- Would initiatives to educate strata owners (both self-managed stratas and stratas using strata managers) about their management roles, options and responsibilities be of benefit as part of the program? Please provide reasons for your response.
- Are the reporting, auditing, and fundamental licensing parameters proposed appropriate?
- What additional costs to the industry and to strata owners are acceptable in implementing a licensing and regulatory scheme for strata managers?
- Would the establishment of a mandatory dispute resolution mechanism (either mediation or arbitration) for disputes between strata managers and councils be of value? Please provide reasons for your response.

Appendix 1

Option 1:

Details of Option for Regulation by the Real Estate Council under the Authority of the *Real Estate Act*

This model has been developed by the Ministry of Finance and Corporate Relations, with input from REC staff and the Office of the Superintendent of Real Estate. In large part, this option replicates existing licensing programs for real estate agents and property managers by the REC.

This model was included in the HPA when it was passed in 1998. The HPA amended the REA to require the licensing of persons who perform strata management services for strata corporations. This provision requires an Order-In-Council to come into effect.

Basic Licensing Requirements

An REC-licensed strata manager would be able to operate his or her business either through a corporation, partnership or sole proprietorship.

Corporations, Partnerships, Sole Proprietors

In order for a strata management firm to become licensed to perform strata management services as a corporation, partnership or sole proprietor, a number of requirements would have to be met. Based upon current REC requirements for property managers, these requirements would include:

- approval of the trade name by the REC;
- submission to the REC of appropriate application forms, prescribed by the REC, for the partner(s) of the partnership or the director(s) of the corporation as well as for a qualified nominee*;
- payment of the licensing fee ($350 for strata management firm plus $350 for a nominee, or $100 if currently licensed) and the errors and omissions insurance premium (currently $250)—licences are issued on a two–year, anniversary-date basis (fees are imposed on a cost-recovery basis);
- evidence of a current certified financial statement (verified by statutory declaration of the intended nominee or certified by a chartered accountant or certified general accountant) as evidence of $5,000 plus three months' estimated operating expenses in unimpaired working capital;
- submission of a municipal business licence or a letter from a regional district confirming that a business licence is not required;
- submission of an original surety bond; and
- a proper place of business, as set out in the Real Estate Council's Licensing Guidelines for Agents.

*A nominee would be an individual appointed by the strata management firm to be that firm's representative under the REA. Nominees would be required to be in regular attendance at the strata management office, and to be in active charge of the business conducted therein. This means they would have overall responsibility for all individuals employed by or licensed with that strata management firm.

For a complete list of administrative requirements, please consult the REC's *Real Estate Licensing Requirements and Guidelines for Agents*.

Licensing of Individuals

For an individual to become licensed, the application for licensing would have to be sponsored by a strata management firm licensed under the REA. The appropriate application form would be completed and submitted to the REC with the current licensing fee and the errors and omissions insurance premium. The individual would then be issued a licence as a salesperson restricted to strata management.

An individual wishing to be licensed as a strata manager (i.e., a salesperson restricted to strata management), or as a nominee for a firm (i.e., agent restricted to strata management), would be required to satisfy a number of requirements as a condition of licensing. In addition to the educational requirements outlined below, and payment of the appropriate licensing fee and the errors and omissions insurance premium, in accordance with the REA regulations, an individual applying for a license would have to be:

- a bona fide resident of British Columbia (includes Canadian citizen, landed immigrant or an individual with a work permit who provides a residential address in British Columbia);
- at least 18 years of age; and
- of good reputation, as required by the REA regulations and as set out in the Real Estate Council's Licensing Guidelines and Requirements for Individuals.

Educational Requirements

The REA requires that licence applicants satisfy certain educational qualifications to ensure an appropriate level of public protection. The REC would have supervision over educational qualifications of strata managers once the licensing requirements became mandatory.

A new educational program would be developed to address the responsibilities of strata managers. The education program would focus on three major activity areas relating to strata management (financial services, professional services, and operational or maintenance services), and ensure that the mandatory topics include those listed earlier in this paper.

In addition, the strata management course would contain core information necessary to understand the requirements of the REA, the Law of Agency, the Law of Contract and other matters germane to the strata management business. It is anticipated that the cost of the strata manager's course would be approximately $800. This estimate is based on current costs of courses provided through the University of British Columbia. The REC receives a $50 administrative fee for each course registration.

Individuals wishing to be nominees for strata management firms (agents restricted to strata management) would also be required to pass an additional pre-licensing course and examination at an additional cost of approximately $800.

Bonding Requirements

To help protect the public from losses incurred due to wrongful or dishonest dealing on the part of a licensee, strata management firms would be required to furnish security by obtaining and filing a bond under the *Bonding Act*, as are all corporations, partnerships and sole proprietorships licensed under the REA. Currently, each licensed real estate agent must independently purchase these bonds and the amount of the bond is set out in government

regulations under the *Bonding Act*. The required bond currently varies from $10,000 to $100,000 depending upon the number of licensees employed by the firm.

The REA was amended in 1998 to replace the bonding requirement with mandatory participation in an industry-operated and -funded compensation fund. The amendments to establish the special compensation fund have not been brought into force, pending development and approval by government of the parameters of the fund. While it has not yet been determined what level of protection would be available under the compensation fund, overall it is expected that the level of protection would be higher than that provided by the bonds.

In the meantime, strata management firms would be required to provide a bond in the amount set out in the Bonding Regulations until such time as coverage was provided by the special compensation fund. If appropriate, this amount could be revised by amending the Bonding Regulations at the same time that the strata manager licensing regulation is passed.

Corporations, partnerships, or sole proprietors wishing to be licensed as strata managers would be advised to discuss with a surety company the cost of acquiring the required bond. Current licensees engaged in property management would need to determine what is needed to extend coverage for strata management activities since bonding for currently licensable activities does not extend to strata management activities.

Errors and Omissions Insurance Requirements

REC licensing would ensure accountability of the strata managers for errors or negligence by requiring the manager to participate in the Real Estate Errors and Omissions Insurance Corporation's (Insurance Corporation) insurance program. The Insurance Corporation is governed by a board of directors comprising three BC Real Estate Association appointees and four directors appointed by the REC. The program is designed to protect licensees from financial loss arising from professional liability claims relating to errors, omissions or negligent acts that occur during the performance of their duties under the REA. The program also provides an avenue for consumers to be compensated when they have incurred a loss due to the negligence or incompetence of a licensee. The REA requires every real estate licensee to participate in this self-funded, not-for-profit program, which pools the assessments paid by all real estate licensees.

The Insurance Corporation's assessment, currently $400 every two years, is collected by the REC on licence issuance and renewal. There is currently a $150 rebate on this assessment, making the net assessment payable by individual licensees $250. At the discretion of the Insurance Corporation, the rebate could be eliminated in one or more future years if increased claims place heavy demands on the insurance program.

The limits on coverage consist of the maximum payable in the amount of $100,000 per transaction, and the annual aggregate amount for the same insured to a maximum of $200,000 per two-year licensing cycle.

At this time, the Insurance Corporation anticipates that errors and omissions insurance coverage consistent with the existing indemnity plan could be extended to strata managers if they become licensed under the REA. The coverage would also be extended to the unlicensed employees of these strata management firms (agents restricted to strata management), providing their activities were restricted to those not requiring licensing under the REA.

The Insurance Corporation reports to the Superintendent of Financial Institutions annually and is required to provide audited financial statements and other information concerning the insurance funds required by the Superintendent.

Audit and Reporting Requirements

In addition to the general audit and reporting requirements listed earlier in this paper, REC-licensed strata managers would be required to pay into a trust account all money held for or received on behalf of a strata corporation and have a year–end audit.

If the required Accountant's Report disclosed that the strata management firm's current liabilities exceed current assets, and/or total liabilities exceed total assets, the REC may require the licensed firm to do one of several things to address the working capital deficiency:

- make a cash injection;
- appoint an independent signing authority and submit monthly or quarterly trust reconciliations; or
- be restricted from accepting any trust deposits, to mitigate the working capital deficiency.

Depending on the number of trust accounts, the sophistication of a firm's accounting system, and accounting services the firm might use, the annual cost of year–end accounting would likely be a minimum of $2,500–$5,000. The annual auditing cost related to the Accountant's Report itself would be dependent on the number of trust accounts a firm maintained and the nature and frequency of trust activity. A "typical" trust account audit might cost $2,000 or more. Potential licence applicants would be advised to seek independent advice in this regard.

As is the case with current REA licensees, strata management firms would also be subject to office inspections performed by the REC to ensure that all licensed firms in the province have proper controls in place to protect trust monies at all times. Another objective of the office inspection would be to provide constructive feedback to a business with respect to any deficiencies in their office management and records. All new strata management firms would be inspected in their first year of operation as licensees.

Strata Management Contract Requirements

A key element in establishing a management agreement between a strata manager and a strata corporation is that both parties understand what services are to be provided. It is proposed that an agreement to provide strata management services to a strata corporation would be required to include, at a minimum:

- the term of the agreement;
- a description of the financial, operational and maintenance services to be provided by the strata manager;
- the level of bonding or other required surety coverage carried by the strata manager as required by the REA;
- all fees, including service fees, to be charged by the strata manager; and
- limitations on the signing authority of the strata manager when acting on behalf of the strata corporation.

It is not intended that specific wording would be mandated with respect to contractual matters; rather, the requirement would be that the management contract reflect the parties' agreement with respect to these items, and any other conditions that the parties wished to include.

Investigative Procedures and Disciplinary Action

As is the case with current REA licensees, the REC would have the authority to conduct disciplinary inquiries into complaints about strata managers that involve possible breaches of the REA or the Regulations under the REA, including misconduct, negligence, or incompetence. In cases where there was a finding by a hearing committee of the REC, of misconduct or any other breach of the REA, the REC would have the authority to apply disciplinary action against strata managers. The REC's disciplinary decisions may be appealed to the Commercial Appeals Commission. (Infractions could range from failure to comply with the preventative measures of the REA, such as the filing of an Accountant's Report, to the misappropriation of trust funds.)

A strata manager acts as an agent for the strata corporation. Consequently, in addition to the general requirements of the REA, the manager would be required to follow the lawful instructions of the strata corporation and fulfil the various fiduciary duties that an agent owes to its principal. These duties would include the following:

- using all due care, skill and diligence in transacting business on behalf of the strata corporation;
- fully disclosing all material facts to the strata corporation;
- avoiding situations where the strata manager's interest may conflict with those of the strata corporation;
- providing competent advice on matters affecting the business of the strata corporation; and
- remaining within the parameters of the strata manager's authority.

Complaints about the failure to fulfil these duties might result in a finding of misconduct, negligence, or incompetence under the REA.

While the REC would not be able to enforce provisions of the SPA, a licensee could be in breach of the REA if the licensee did not follow the requirements of the SPA in performing the duties for which they were given responsibility. For example, a strata manager could be negligent under the REA if the strata manager did not properly collect maintenance fees. The REC would have no jurisdiction, however, to actually ensure collection of these fees.

Where there was a finding that the licensee was in breach of the REA, including findings of misconduct, negligence or incompetence, the regulatory body would have the authority to do the following:

- reprimand the licensee;
- suspend or cancel the licence; or
- require that the licensee complete additional education.

The Superintendent of Real Estate retains the authority under the REA to withdraw from the REC any matter that is before it for decision, and decide the matter instead of the REC. The Superintendent may also appeal disciplinary matters that have already been dealt with by the REC when appropriate.

Transition

A regulatory regime for strata managers under the REA with oversight by the REC could come into force early in 2001. It is recognized that reasonable notice of the proposed components of the licensing regime and a reasonable transition period would be necessary to allow for development of the courses and to enable affected parties to comply with the new educational requirements.

For those individuals not currently licensed under the REA, a salesperson's licence restricted to strata management would be issued, conditional upon the completion of education requirements within a period of time specified by regulation. Individuals currently licensed and wishing to perform strata management services would have to complete the new strata management education requirements in this same time frame.

Those individuals wishing to become nominees who are able to demonstrate sufficient prior strata management experience would be required to complete the agent's pre-licensing course and examination requirements within their first licensing cycle (i.e., two years).

It is proposed that all other licensing requirements, other than the necessary education component, would be required prior to issuance of the initial restricted licence. Restricted licences would be cancelled if the necessary education was not completed within the allotted time.

Option 2:

Strata Manager Licensing Under the Homeowner Protection Office

A new program could be developed that would see strata managers regulated by the HPO. A licensing program under this option could be in place later in 2001.

Basic Licensing Requirements

In order for a strata management firm to become licensed to perform strata management services as a corporation, partnership or sole proprietor, a number of requirements would have to be met including:

- submission of prescribed application form(s) to the HPO for the entity to be licensed including identification of the partner(s) of the partnership or the director(s) of the corporation as well as for a nominee;
- payment of the licensing fee (an estimated $500 for strata management firms). Fees are imposed on a cost-recovery basis to cover program costs including administration, compliance and enforcement; and,
- submission of financial instruments (errors and omission coverage and/or bonding).
- Selection of a nominee appointed by the strata management firm to be that firm's representative for all licensing matters.

A licensing program under the HPO could be phased in, beginning with licensing of strata management firms (whether a corporation, partnership or sole proprietorship), and moving toward licensing of individual employees of the firms once the initial program is in

place. In the first phase, firms would be responsible and accountable for the performance of their employees and agents.

Issues such as the term of the licence (e.g., whether one or two years) would be determined based upon consultations with industry and consumers. Under any licensing program, basic licensing requirements would need to be met for both licence issuance and renewal.

The registrar of strata manager licensing for the HPO would have the following major responsibilities:

- to receive and review applications for licensing;
- to issue licenses to, and renew the licenses of strata managers;
- to suspend, restrict or cancel licenses; and,
- to maintain a public registry of licensed strata managers.

Educational Requirements

Educational requirements could be developed and implemented incrementally, once the initial licensing program was in place, to allow for timely implementation of basic controls and consultation with industry and stakeholders on the development of educational requirements. The basic educational requirements for the fully implemented program would include the general educational requirements listed earlier in this paper.

Professional Liability Insurance

One objective of strata manager licensing will be to ensure that strata managers are more accountable for their management of property and funds. To this end, the licensing program will require that some form of redress be available to strata corporations in the event of financial loss due to errors, fraud or negligence.

One option to ensure consumer protection would be to require strata management licensees to obtain a minimum level of third party liability insurance to be eligible for licensing or licence renewal. The purpose of the insurance would be to provide redress for strata corporations in the event of errors, negligence or fraud on the part of the strata manager.

Because strata management licensees would be responsible for maintaining their eligibility for a prescribed level of third party insurance at an affordable cost, they would have an interest in maintaining sound practices. Since they would be responsible for, and insurance policies would be required to cover, the actions of their employees, they would also have an interest in making sound hiring decisions and monitoring employee performance.

The HPO would review and approve applications for licensing from individual strata managers. Errors and omissions insurance and fraud insurance could be arranged in one of two ways:

1. Errors and omissions and fraud insurance arranged individually by the strata manager, as a condition of licensing: Review of strata managers by a third-party insurance company would provide for an unbiased assessment of the financial capability and performance of the strata manager. The underwriting criteria would be clear and straightforward.
2. Errors and omissions and fraud insurance provided by the HPO for licensed strata managers: The HPO could contract with a single provider of errors and omissions insurance. The provider of coverage to the HPO would be selected through a competitive tender process. The tender process would be open to competitive reviews on a pre-set basis.

Consultation would be required with the insurance industry to review the range of professional liability products that are currently available, and identify appropriate products that would provide adequate protection to strata corporations in the event of errors, fraud or negligence by a strata manager. The cost of such products and the dollar value of protection they would provide strata corporations would be determined through consultation with stakeholders. The goal is to reflect current operations of the strata management industry and to ensure that consumers are adequately protected.

Bonding may or may not be required (either by the regulatory body or by third party insurers), depending upon the need for additional security.

Audit and Reporting Requirements

In addition to the general audit and reporting requirements listed earlier in this paper, HPO licensed strata managers would be required to pay into trust accounts all money held for or received on behalf of a strata corporation and have a year-end audit.

Strata Management Contract Requirements

Similar to the REC option, the regulations to the HPA for strata manager licensing would include requirements for standardized contracts and reporting between the strata corporation and the manager. These requirements would include: the terms of the agreement, a description of the services to be provided, financial security requirements, fees and charges, signing authorities and a third party dispute resolution mechanism (mandatory mediation or arbitration). The last element is critical to provide for a quick and inexpensive mechanism to provide for the timely resolution of disputes.

Investigative Procedures and Disciplinary Action

Similar to the current process with its licensed residential builders, the registrar of strata management licensing for the HPO would have broad powers of investigation and inspection.

The registrar would be authorized to question any person about any matter that relates to the licensing of strata managers and inspect the records of a person who is required to be licensed. The registrar would investigate complaints concerning the performance of strata managers.

The registrar would have the power to refuse to renew, suspend, cancel or impose restrictions on the licence of a strata manager if the manager is in breach of a condition of, or restriction on, the licence or is convicted of an offence under this Act or the regulations.

If the registrar refuses to issue a licence to, or renew the licence of, a strata manager, or suspends, cancels or imposes restrictions on the licence of a strata manager, the registrar must serve notice of the decision, together with written reasons, on the strata manager and state in the notice that the strata manager has a right to appeal the decision of the registrar to the Commercial Appeals Commission under the *Commercial Appeals Commission Act*.

The appeal must be made in the manner and within the time allowed in the *Commercial Appeals Commission Act*.

Appendix 2

Excerpt from Barrett Commission report (June 1998), The Renewal of Trust in Residential Construction, pages 54, 55, Chapter Two, The Framework of Residential Construction, XI. Management Companies and Strata Councils.

There are approximately 840,000 strata lots in the province, making this form of property ownership very significant.

Proper maintenance is an important element of multi–family, residential buildings. However, in the research and submissions presented to this Commission, there is no evidence to suggest that improper maintenance procedures are an element in creating the leaky condo crisis. In fact, in addition to testimony provided by building envelope specialists and other professionals, the most definitive survey undertaken in 1996 identified design and construction as the two main factors responsible for water penetration.

Strata Councils and property managers have explained to the Commission that, upon initial reports of leaks or water damage, they have attempted to tackle the problem immediately. Few had expected such a horror story related to inadequate or faulty design, poor construction materials, and workmanship. Further, they have found that initial suggestions by some developers, builders, engineers, and their warranty program, to apply remedial caulking and exterior maintenance programs as a solution, was ineffective. The buildings began to self-destruct within a few months.

Condominium property managers operate at the direction of and report to the elected strata council. Payment for services is on a fixed-term/fixed-fee contract basis. The services provided to a multi-unit residential building by a well-qualified property manager should not be underestimated. There is a need to ensure minimum standards of business practices and professional acumen. While many in the property management industry have construction-related backgrounds or experience, it is useful to consider ongoing professional development. This should deal with fiduciary responsibilities for the management of finances, ongoing maintenance and repair standards, and plans for long-term repairs and long-term replacement of common property features.

> **Recommendation #52: All property management firms for condominium buildings be registered immediately with the Homeowner Protection Office.**
>
> **Recommendation #53: All property management firms for condominium buildings be licensed by the Homeowner Protection Office, pending discussion with the industry on the most appropriate form of education, training and qualification.**

Excerpt from Second Barrett Commission report (March 2000), pages 117–118, Chapter 5, II Provincial Government, B. FICOM, 1. Strata Sales and Strata Corporation Issues, iii) Licensing of Strata Managers and Strata Management Companies.

The Commission's first report called for the registration and licensing of property managers by the HPO.

> **Recommendation #52: All property management firms for condominium buildings be registered immediately with the Homeowner Protection Office.**
>
> **Recommendation #53: All property management firms for condominium buildings be licensed by the Homeowner Protection Office, pending**

discussion with the industry on the most appropriate form of education, training, and qualification.

In principle, recommendations #52 and #53 have been adopted, except the provincial government intends to license and regulate property management firms under the authority of FICOM (Financial Institutions Commission) and its agency, the Real Estate Council. Apparently, the rationale behind this approach is that property managers, by virtue of their leasing activities as well as their collection of rents, are currently registered with the Real Estate Council. Many property managers also act as strata managers for condominium buildings. Therefore, it is suggested that licensing these managers under the HPO could be viewed as dual licensing.

The Commission has serious concerns regarding the regulation, training and qualifications for property management firms being under the authority of the Real Estate Council, and stresses the need for this regulatory role to be performed by the HPO and implemented expeditiously, given the importance of strata property management to homeowners. The Commission also has concerns about the perceived and real conflict of interest on the Real Estate Council, vis–à–vis their relationship to property management companies, which may be owned by a realty firm. It is necessary to avoid any situations where strata groups and consumer organizations feel there is a bias by a regulatory council.

Although the principle of the Commission's regulations has been adopted, Regulations will not be forthcoming until at least mid-2000, at the earliest—two years after the Commission's first report. This recommendation should be implemented as quickly as possible.